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Supreme Court, U. S.  
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MAR 22 1978  
MICHAEL RODAK, JR., CLERK

No. 77-5992

IN THE  
SUPREME COURT OF THE UNITED STATES  
October Term, 1977

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FRANK O'NEAL ADDINGTON, Appellant

v.

THE STATE OF TEXAS

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Appeal from the Supreme Court of Texas

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MOTION TO DISMISS

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JAMES F. HURY,  
CRIMINAL DISTRICT ATTORNEY  
GALVESTON COUNTY, TEXAS

405 COUNTY COURTHOUSE  
GALVESTON, TEXAS 77550  
ATTORNEY FOR APPELLEE

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I.

Appellee moves the Court to dismiss the appeal of Appellant on the ground that there exists no substantial Federal question.

II.

A. Statute Involved.

This appeal raises the question of the validity of a certain provision of the Texas Mental Health Code, TEX.REV.CIV.STAT.ANN. Art. 5547 (1958). The provision of the statute provides for an indefinite commitment of a person to a mental hospital. However, the burden of proof for such a commitment was not specifically stated in the statute.

B. Nature of the Case.

This is a civil commitment suit instituted by the State of Texas to indefinitely commit Respondent to a state hospital. The cause was tried before a jury in Probate Court, Galveston, Texas. The jury was instructed that the State's burden of proof was by clear, unequivocal, and convincing evidence. Respondent was committed. On appeal the Court of Civil Appeals reversed and remanded holding the State's burden was beyond a reasonable doubt. The Supreme Court of Texas held Court of Civil Appeals erred that the burden was by preponderance of the evidence.

### III.

#### Argument

The appeal should be dismissed because there exists no substantial Federal question for the Court to decide. This indefinite commitment proceeding is a civil proceeding and Appellant agrees that it is civil. That being the case, the burden of proof in all civil proceedings has always been by the preponderance of the evidence.

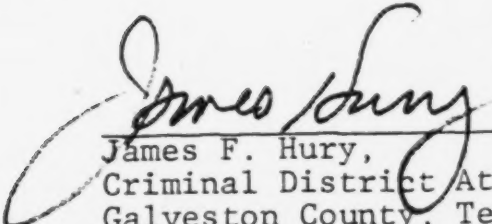
Appellant contends that unless the reasonable doubt standard is applied, due process has been denied. Due process only requires procedural safeguards to be determined by the circumstances by weighing Governmental and private interest. Morrissey v. Brewer, 408 U.S. 471 (1972). It was therefore concluded that no constitutional requirement for a reasonable doubt standard existed in temporary mental commitment hearings. Moss v. State, 539 S.W.2d 936; 943 (Tex.Civ.App.-Dallas, 1976 no writ). Later the Supreme Court of Texas held that the burden of proof in indefinite commitment hearings is by the preponderance of the evidence. State v. Turner, 556 S.W.2d 563 (Tex. 1977); Tippett v. Maryland, 436 F.2d 1153, 1158-59 (4th Cir. 1971), cert. dismiss'd sub nom; Murel v. Baltimore City Crim. Ct., 407 U.S. 355 (1972); In re Alexander, 372 F.2d 925 (D.C.Cir. 1967).

Appellant further argues that the reasonable doubt standard should be grafted onto indefinite civil commitment proceedings just as it was grafted onto juvenile proceedings. The distinguishing factor which sets juvenile proceedings apart from indefinite commitment proceedings is that juveniles commit acts of wrongdoing against other people. A person committed to a state hospital for indefinite commitment is there because of emotional problems, as opposed to commitment because of harm done to others.

#### Conclusion

For the reasons stated above the appeal should be dismissed.

Respectfully submitted,

  
James F. Hury,  
Criminal District Attorney  
Galveston County, Texas  
405 County Courthouse  
Galveston, Texas 77550  
(713) 762-8621

Counsel for Appellee

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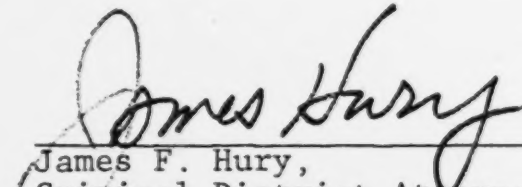
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PROOF OF SERVICE

I, James F. Hury, the attorney for the State of Texas, Appellee herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 20th day of March, 1978, I served two copies of the foregoing Motion to Dismiss on William P. Allison, attorney for Appellant, by mailing the copies in a duly addressed envelope, by certified mail, first class, postage prepaid and return receipt requested.

I further certify that all parties required to be served have been served.

  
James F. Hury,  
Criminal District Attorney  
Galveston County, Texas  
405 County Courthouse  
Galveston, Texas 77550  
(713) 762-8621

ATTORNEY FOR THE STATE OF TEXAS